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No. (1)

Supreme Court, U.S.
FILED

08-597 SEP 4- 2008

OFFICE OF THE CLERK

In The

Supreme Court of the United States

GERARD P. DUMORANGE,

Petitioner,

v.

CITY OF MIAMI,

Respondent.

On Petition For Writ Of Certiorari To The Florida Third District Court Of Appeal

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Third District Court of Appeals for Florida violated the Fourteenth Amendment Due Process Rights by **affirming** a mediation settlement agreement that was signed under duress?
2. Whether the Third District Court of Appeals for Florida violated the Fourteenth Amendment Due Process Rights by not **Granting or Denying** a motion for oral argument?
3. Whether under the United States Constitution threats, harassment, intimidation, and numerous attempts to kill a person or his or her family **if** he or she does not sign a contract **are duress**?
4. Whether a client that is represented by his or her attorney signed a contract under duress with written remarks stating: "per his or her attorney this is a court order. It must be signed. He or She disagree." **is a binding contract** under the United States Constitution?
5. Whether a client attorney and the opposing attorneys that were told by two authorized representatives of the Florida Unemployment Appeals Commission attorneys not to settle because they are not authorized representatives have the rights to settle on behalf of the **Federal Unemployment Program** that is run by the Florida Unemployment Appeals Commission?
6. Whether the **United States Constitution** protects the rights of a former Police Officer/Person to work and live his or her life free of fears, threats, harassments, and intimidations after he or she reported violations or suspected violations of the law?

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OPINION BELOW

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JURISDICTION

This is a timely filed Petition for Writ of Certiorari. The Florida Supreme Court declined to accept jurisdiction on June 20, 2008. This court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

AMENDMENT 14

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State *deprive* any person of life, liberty, or property, without *due process* of law; nor deny to any person within its *jurisdiction* the equal protection of the laws.

STATEMENT OF THE CASE AND THE FACTS

The case originated on September 22, 2002. I was working as a City of Miami Police Officer. I witnessed a shooting in which my former fellow police officers shot the suspect twenty six to thirty times. Sergeant Julio A. Pino told me to lie that I had seen a gun. I refused to lie because I did not see a gun. The U.S. Attorney was prosecuting our former Executive Assistant to the Police Chief and (12) twelve other City of Miami Police Officers for fabricating evidence and other violations. During the trial Sergeant Pino informed me that our former Executive Assistant to the Police Chief was having an intimate relationship with one of the jurors that were in his trial. Sergeant Pino directed me to lie about the circumstances surrounding the shooting. I instead reported Sergeant Julio A. Pino to my supervisors, Internal Affairs, and Professional Compliance. I also reported Commander Gary C. Eugene due to knowledge that he stated that he was willfully spreading HIV virus and because he suggested that I take monies, illegally from individuals such as Mr. Lubens and others.

Once I reported Sergeant Pino and Commander Eugene, I was threatened, harassed, and intimidated by them. I then attempted to combat this by reporting Sergeant Pino and Commander Eugene to the federal authorities and others. The same two superiors that I reported, recommended and signed my termination. As a result, I was terminated from the City of Miami Police Department on May 27, 2003. A whistleblower

action was filed (*Case No.* 03-22103 CA 24) in the Eleventh Judicial Circuit Court of Miami-Dade. Because an entity of the State of Florida was being sued, mediation was mandatory.

On Sunday, April 16, 2006, two days prior to the disputed mediation settlement agreement, my old police uniforms and bullets, which had been accounted and turned in by Internal Affairs Sergeant Gonzalez into the City of Miami Police department evidence/property room in May 2003, were stolen/taken and then left on my front lawn. In addition, I received numerous threats that my life and my family's lives were in danger. I was also threatened, harassed, and intimidated by former and current police officers in person, which constituted numerous attempts on my life.

On Tuesday, April 18, 2006, the day of the mediation settlement agreement, my former attorney and the other attorneys called the Florida Unemployment Appeals Commission Assistant Attorney Mr. Kunburger and the General Attorney, Mrs. Hazelton. They told my former attorney and the other attorneys that because they are not authorized representatives of the Florida Unemployment Appeals Commission and also Unemployment Compensation is a Federal Program. They are not authorized to settle on behalf of the Florida Unemployment Appeals Commission. They are not authorized to write on the contract **Paragraph 2** that I am entitled to keep my unemployment benefits. They also told the attorneys that the mediation settlement agreement will not be

binding because they **have no authority** to state on the contract (section 2) that I am entitled to keep my Unemployment benefits. Only the Florida Unemployment Appeals Commission has the authority once the employer argued it. My former attorney advised me that I was "better-off" signing the mediation settlement agreement because **if not**, my family and I would be killed. I did not want my family or I to be killed. My former attorney and the City of Miami attorney told the Florida Unemployment Appeals Commission attorneys that under these circumstances they have the authority and that I had no choice but to sign it. I was again told I had to sign the mediation settlement agreement produced because failure to do so would be against a court order and endanger my life and my family's life. **Under this duress,** I had no other choice but to sign the mediation settlement agreement. In an attempt to protect myself from it being binding and to evidence that I did not agree, I wrote on the mediation settlement agreement the following: ***"Per Donna, (my former attorney) this is a Court Order. It must be signed. I disagree."***

I then challenged the enforceability of the mediation settlement agreement and hearings were held. My former attorney **(Donna)** under oath told Judge Michael A. Genden that she was very concerned about my safety and my family's safety. **Judge Genden** stated that threatening, harassing, intimidating, and attempting to kill a person are **not duress** and that a client that is represented by his or

her attorney signing a contract under such circumstances results in a binding contract and he does not care about the witnesses that were present when I met Commander Eugene.

It was further opined that the living free from duress, even when signing a contract, was not a protected right under the United States Constitution. I then appealed to the Florida Third District Court of Appeals, seeking the court to render a written opinion whether Judge Genden was correct about the above listed statements and especially in ruling that I was not under duress when I signed the mediation settlement agreement on April 18, 2006 (*Case No.* SC07-2321). After the oral argument, they affirmed – Per Curiam without a written opinion – on their response dated May 02, 2007. On September 14, 2007, I filed a petition for writ of certiorari **and** motion for oral argument on *Case No.* SC07-2321. A motion for the previous judges to recuse themselves was also filed. The motion for the two previous judges to recuse themselves was denied. **However,** the Florida Third District Court of Appeals did not **grant nor deny** my motion for oral argument. In the petition it was questioned among other things, whether the Eleventh Judicial Circuit Court erred or overlooked critical facts that showed my duress regarding the disputed mediation settlement agreement.

Honorable Justices, I am very concerned with the Florida Third District Court of Appeals order (*Case No.* SC07-2321) denying my motion for Judges Gersten, Ramirez, and Suarez to recuse themselves; **it**

stated: "request for disqualification was waived by the . . . delay in submitting the suggestion [for disqualification] until after this court ruled on the cause." Honorable Justices, all my documents were submitted together and on time. Per the Court, one of the clerks had misplaced my motion for oral argument and my motion for Judges Gersten, Ramirez, and Suarez to recuse themselves. Because the clerks know that they were submitted, I was told to resubmit them. As a result, per the Court/clerks, they were resubmitted and then after the judges made a decision they were located. Honorable Justices, there is no way that an average person or I would have known that one of the Court/clerks would have misplaced my motion for Judges Gersten, Ramirez, and Suarez to recuse themselves and then my motion for oral argument also would not have been granted or denied. The Florida Third District Court of Appeals Judges made a decision prior to the clerk recovering both of my misplaced motions. As a result, the Court had no other choice but to write a decision after they had already denied my writ of certiorari petition and my rehearing.

SUMMARY OF ARGUMENT

The Florida Third District Court of Appeals decision to affirm Judge Michael A. Genden's statements and orders also expressly and directly conflicts with the proper Administration of equal Justice under the law, and the Fourteenth Amendment of the

United States Constitution which states: "No State shall make or enforce any law which shall abridge the ***privileges or immunities*** of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without ***due process*** of law; nor deny to any person within its jurisdiction the ***equal protection*** of the laws."

Further, because the Florida Third District Court of Appeals clerk had misplaced my motion for Judges Gersten, Ramirez, and Suarez to recuse themselves and my motion for oral argument, the Court's decision was not the proper Administration of equal Justice under the law. As a result, they were confused and they also still did not grant or deny my motion for oral argument. The judge at the circuit level refused to consider any evidences/witnesses that I had signed the mediation settlement agreement under duress, and my former attorney and the others attorneys were are not authorized to settle on behalf of the Florida Unemployment Appeals Commission. My due process rights were seriously hindered. Although a participant in the court hearings, my voice was rendered mute by the actions of the circuit judge. Due process requires that some sort of hearing be held before citizens' rights are taken away. In this matter, although a hearing was held, I was effectively prohibited from participating by Judge Genden not allowing me to present **witnesses** to

argue the matter and my motion for oral argument was neither granted nor denied.[1]

ARGUMENT

I. THE MEDIATION SETTLEMENT AGREEMENT SHOULD BE VOID DUE TO IT BEING SIGNED UNDER DURESS.

The evidence that I was barred from introducing witnesses at hearing clearly shows that I signed the mediation settlement agreement under duress. On May 27, 2003, I was wrongfully terminated by the City of Miami Police Department for reporting violations or suspected violations of the laws. My former attorney filed a wrongful dismissal suit as a whistle blower (*Case No.* 03-22103 CA 24) in the Eleventh Judicial Circuit Court of Miami-Dade. As a result of my filing the suit against the City of Miami, several police detectives pulled me over, pointed a gun to my forehead and threatened to kill me unless I voluntarily dismissed my lawsuit. The incident was reported. It occurred on June 3, 2004.

On November 12, 2004, several police detectives came to my home and threatened me. They pointed a gun to my forehead and threatened to kill me and my family if I did not drop my complaints which were

[1] My Florida Unemployment Appeals Commission Case is Still Open. The telephone number for the Appeals Commission is (850) 487-2685.

reported. Soon thereafter, Commander Eugene called me and requested that we meet. ***We met in front of these witnesses:*** Mr. Antoles, Mr. Cherasard, Father Reginald and Father Jocelyn. I brought my wife to one of the meetings. The Commander stated that if the case was not dropped my family and I would be killed. The meetings were reported to the authorities.

On January 2, 2004, I was followed and falsely arrested simply because I was supposed to testify. The charges were Falsely Impersonating a Police Officer and Improperly Displaying of Police Indicia. I had no badge, no police identification, no blue light and I did not tell him that I was a police officer. While in custody, I was threatened, harassed, and intimidated. The **Honorable Judge Scott Silverman** of Eleventh Judicial Circuit Court of Miami-Dade dismissed the trumped up frivolous false arrest charges with prejudice (*Case No.* F04000133). On January 7, 2004, a police officer stopped me and took my personal property. The incident was reported. On March 19, 2004, unknown police detectives came to my home and again threatened me.

Several unknown police detectives continued to threaten, harass, and intimidate me; they even came to my Masonic Temple. I became terrified once a fellow Freemasonic brother was shot. I was forced to refinance my home, sell our family personal properties and one of my homes in order to pay $160,000.00 in legal fees. The duress became physical and financial. Unknown police officers on April 11, 2006, stopped me, and took approximately $6,500.00 from

me. My children were with me; one of the police officers then pointed a gun at me and threatened to kill my children. Five days later, my former police uniforms and four bullets were dumped on the front lawn of my house by unknown police officers. The incidents were also reported.

Honorable Justices, my former police uniforms and the bullets that were turned in by City of Miami Police Internal Affairs Sergeant Gonzalez were stolen/taken from City of Miami Police Department evidence/property room and then dumped in front of my house and are still in the custody of the attorney, Miguel Parlade, that represented me before Judge Genden.

My former attorney and the others attorneys were are not authorized to settle on behalf of the Florida Unemployment Appeals Commission and also my former attorney under oath told Judge Genden that she was very concerned about my safety and my family's safety.

Two days later, on April 18, 2006, I was advised by my former attorney and the other attorneys to sign the mediation settlement agreement in order to stop the threats, harassments, and intimidations against my life and my family. The attorneys then told me that I had to sign the mediation settlement agreement or be placed in contempt of court and face possible imprisonment. Wanting to end the threats, harassments and intimidations to my life, my family, and prevent going to jail, I signed the mediation

settlement agreement. But not without first attempting to stipulate that I did not voluntarily agree and that it was an act I was directed to do.

From the timeline above, it is clear that I signed the mediation settlement agreement under extreme physical and financial **duress**. I was threatened, harassed and intimidated and numerous attempts were made to kill me. The authorities made no attempts to protect me simply because I broke the **blue wall of silence**. They even took money from me. This is duress. In events of duress, "contracts tainted by mistake, ***duress***, or even fraud are voidable at the option of the innocent party". **See** 1 Restatement (Second) of Contracts §7, and Comment *b* (1979).

II. THE CIRCUIT COURT JUDGE DENIED MY PROCEDURAL DUE PROCESS BY FAILING TO ALLOW ME TO PRESENT MY WITNESSES/EVIDENCE DURING HEARINGS.

The Judge Genden for the Eleventh Judicial Circuit erred when he disallowed me to present evidence, namely the ***witnesses*** I had to the duress I was victim to, in the hearings regarding the enforcement of the mediation settlement agreement. The Florida Third District Court of Appeals and the Florida Supreme Court continued this error by denying my appeals with no hearing on the matter. The Eleventh Circuit Court's Judge Genden's refusal to allow me an opportunity to present my ***witnesses*** because he does not care about my witnesses. The

Florida Third District Court of Appeals Judges had already made a decision prior to the clerks' recovering of both of my misplaced motions. As a result, the Court had no other choice but to write a decision after they had already denied my writ of certiorari petition and my rehearing and still did not **grant nor deny** my motion for oral argument. This is not the proper Administration of equal Justice under the law; the confusion amounts to a denial of my procedural due process rights under the Fourteenth Amendment of the United States Constitution.

In the Case of ***Goldberg v. Kelly,*** 397 U.S. 254 (1970), the court found that in order to protect a person's procedural due process rights, a state must provide a hearing before an impartial judicial officer, the right to an attorney's help, the right to present evidence and argument orally, the chance to examine all materials that would be relied on or to confront and cross-examine adverse witnesses, or a decision limited to the record thus made and explained in an opinion. In this matter, the court failed to meet the requirement of allowing me an opportunity to present witnesses/evidences and argue orally. The court did not allow my ***witnesses*** to testify who were present when Commander Eugene of the City of Miami Police Department told me that I and my family would be

given a "Columbian neck tie"[2] unless I dropped the complaint. Instead, the court arbitrarily decided Commander Eugene was credible without hearing any witnesses/evidence to rebut the presumption. The court's refusal to allow me to present and rebut evidence is a clear violation of my due process rights.

One may argue that "[D]ue process is flexible and calls for such procedural protections as the particular situation demands," as was argued in ***Morrissey v. Brewer***, 408 U.S. 471, 481 (1972). However, in this matter we have a hearing that was being held in the State Circuit Court, where the Florida Rules of Civil Procedure apply. Both I and the City of Miami have a clear right to, at the least, present witnesses/ evidence. This was not allowed at all for me. My due process rights were therefore suspended. In ***Barton v. Armstrong***, a decision of the Privy Council 2 AER 465, 5 December 1973, Armstrong threatened to kill Barton if he did not sign a contract, so the court set the contract aside. An innocent party wishing to set aside a contract for duress to the person need only to prove that the threat was made and that it was a reason for entry into the contract; the onus of proof then shifts to the other party to prove that the threat had no effect in causing the party to enter into the contract.

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[2] A **Columbian neck tie** is when a person's tongue is cut, removed from the mouth and tied in a knot along with the genitals. The tongue and genitals are then placed in the victim's mouth as a sign to others not to cooperate with the authorities.

Honorable Justices, it is crystal clear that I was threatened, harassed, intimidated, and numerous attempts were made to kill me.

CONCLUSION

Honorable Justices, for the undisputed facts/ reasons stated, this Honorable Court should grant my petition for writ of certiorari and also reverse the decision of the Lower Courts and validate the proper Administration of equal Justice under the law, and at issue as blatant violations of the Fourteenth Amendment of the United States Constitution.

Respectfully submitted,

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Originally filed September 4, 2008

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2007
OCTOBER 9, 2007

GERARD P. DUMORANGE, CASE NO.: 3D07-2321
Appellant(s)/Petitioner(s),

vs.

CITY OF MIAMI, LOWER TRIBUNAL NO. 03-22103
Appellee(s)/Respondent(s).

Following review of the petition for writ of certiorari, it is ordered that said petition is hereby denied. COPE, RAMIREZ and SUAREZ, JJ., concur.

Respondent's motion to dismiss is moot.

[SEAL]

/s/

cc:
Gerard P. Dumorange
Zascha Blanco Abbott
Hon. Michael A. Genden
ag

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2007
NOVEMBER 8, 2007

GERARD P. DUMORANGE, CASE NO.: 3D07-2321
Appellant(s)/Petitioner(s),

vs.

CITY OF MIAMI, LOWER TRIBUNAL NO. 03-22103
Appellee(s)/Respondent(s).

Upon consideration, petitioner's motion for rehearing is hereby denied. COPE, RAMIREZ and SUAREZ, JJ., concur.

[SEAL]

/s/

cc:
Gerard P. Dumorange
Zascha Blanco Abbott
Hon. Michael A. Genden

la

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2008
JANUARY 8, 2008

GERARD P. DUMORANGE, CASE NO.: 3D07-2321
Appellant(s)/Petitioner(s),

vs.

CITY OF MIAMI, LOWER TRIBUNAL NO. 03-22103
Appellee(s)/Respondent(s).

On consideration of petitioner's Motion Requesting the Status of My Motion for Judges to Recuse Themselves, the court advises the petitioner that Judges Ramirez and Suarez have declined to recuse themselves. *See In re Estate of Carlton*, 378 So. 2d 1212, 1219 (Fla. 1979) ("request for disqualification was waived by the . . . delay in submitting the suggestion [for disqualification] until after this Court ruled on the cause."). The motion for recusal is moot with regard to Chief Judge Gersten because he did not participate in the case. COPE, RAMIREZ and SUAREZ, JJ., concur.

[SEAL]

/s/

cc:
Gerard P. Dumorange
Zascha Blanco Abbott
Hon. Michael A. Genden
la

Supreme Court of Florida

FRIDAY, JUNE 20, 2008

CASE NO.: SC08-189
Lower Tribunal No(s).: 3D07-2321

GERARD P. DUMORANGE	vs.	CITY OF MIAMI, FLORIDA
Petitioner(s)		Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d).

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, and QUINCE, JJ., concur.

A True Copy
Test:

/s/ Thomas D. Hall [SEAL]
Thomas D. Hall
Clerk, Supreme Court

bm
Served:

GERARD P. DUMORANGE
JULIE O. BRU
ZASCHA BLANCO ABBOTT
HON. MARY CAY BLANKS, CLERK
HON. MICHAEL A. GENDEN, JUDGE
HON. HARVEY RUVIN, CLERK

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No. 08-597

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In The

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GERARD P. DUMORANGE,

Petitioner,

v.

CITY OF MIAMI,

Respondent.

On Petition For Writ Of Certiorari To The Florida Third District Court Of Appeal

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the state trial court violated any federal rights of the Petitioner where, after a full evidentiary hearing on two dates where the Petitioner was represented by counsel, the court found that a settlement agreement was legally binding and entered an order enforcing the agreement, which was entered into between the parties at a court-ordered mediation where the Petitioner was present and represented by counsel.

PARTIES TO THE PROCEEDINGS

Petitioner is Gerard P. Dumorange, who was the plaintiff, appellant, and petitioner below.

Respondent is the City of Miami, which was the defendant, appellee, and respondent below.

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STATUTES

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OPINIONS BELOW

The Petitioner seeks review of the order of the Florida Supreme Court declining jurisdiction reported at *Dumorange v. City of Miami,* 987 So.2d 80, 2008 WL 2521903 (Fla. 2008). The order of the court of appeal denying the Petitioner's motion for recusal is reported at *Dumorange v. City of Miami,* 972 So.2d 189 (Fla. Ct. App. 2008). The order of the circuit court granting Respondent's motion to enforce settlement agreement is not reported and is reproduced at Appendix 1.

STATEMENT OF THE CASE

The Petitioner is a former public employee who held the rank of police officer in the City of Miami Police Department. The Petitioner filed a lawsuit in Florida circuit court against the City of Miami alleging violation of the Florida Public Whistle-blower's Act, Fla. Stat. § 112.3187. *Dumorange v. City of Miami,* Case No. 03-22103 (11th Judicial Circuit Court in and for Miami-Dade County, Florida).

On April 18, 2006, the parties attended a court-ordered mediation. The Petitioner and the Respondent were represented by counsel at the mediation (which lasted more than four hours). At the conclusion of the mediation, the parties reached a settlement and signed an agreement. The petitioner did not sign under protest. The mediator filed a report

with the court confirming that a settlement had been reached.

Subsequently, on April 19, 2006, at the end of the day, Petitioner's counsel notified Respondent's counsel that the Petitioner was revoking his acceptance of the settlement. The Petitioner terminated his attorney and retained substitute counsel.

The Respondent filed a motion to enforce the settlement agreement. The circuit court held an evidentiary hearing on two dates: December 13, 2006 and January 8, 2007. The Petitioner was represented by counsel at the hearing. Witnesses at the hearing included: the attorney who represented the Petitioner at the mediation; a police commander who was alleged to have threatened the Petitioner; the Petitioner; and the Petitioner's spouse. After the hearings, the circuit court granted the Respondent's motion to enforce settlement agreement. The written order granting the motion was entered on January 23, 2007 and required the Petitioner to execute a general release within ten days. App. 1

Numerous appeals followed the circuit court's order enforcing the settlement agreement. On February 6, 2007, the Petitioner appealed the circuit court's order to the Florida Third District Court of Appeal in *Dumorange v. City of Miami*, Case No. 3D07-321. On May 2, 2007, the Court of Appeal per curiam affirmed the circuit court order. *Dumorange v. City of Miami*, 959 So.2d 1197 (Fla. Ct. App. 2007).

On August 13, 2007, the Petitioner appealed the decision of the court of appeal to the Florida Supreme Court in *Dumorange v. City of Miami*, Case No. SC07-1521. On August 15, 2007, the Florida Supreme Court dismissed the appeal for lack of jurisdiction. *Dumorange v. City of Miami*, 965 So.2d 121 (Fla. 2007).

On September 14, 2007, the Petitioner filed a second appeal of the same circuit court order by filing a petition for writ of certiorari with the court of appeal in *Dumorange v. City of Miami*, Case No. 3D07-2321. On October 9, 2007, the court of appeal denied the petition.

On December 10, 2007, the Petitioner appealed the denial of his petition for writ of certiorari to the Florida Supreme Court in *Dumorange v. City of Miami*, Case No. SC07-2309. On December 13, 2007, the Florida Supreme Court dismissed the appeal for lack of jurisdiction. *Dumorange v. City of Miami*, 973 So.2d 1120 (Fla. 2007).

On January 8, 2008, in Case No. 3D07-2321, the court of appeal entered an order denying a motion by the Petitioner requesting recusal of the panel of judges. *Dumorange v. City of Miami*, 972 So.2d 189 (Fla. Ct. App. 2008). On January 25, 2008, the Petitioner filed another appeal to the Florida Supreme Court, following the order of the court of appeal denying the Petitioner's motion for recusal of judges, in *Dumorange v. City of Miami*, Case No. SC08-189. On June 20, 2008, the Florida Supreme Court declined to

accept jurisdiction. *Dumorange v. City of Miami,* 987 So.2d 80, 2008 WL 2521903 (Fla. 2008).

In the meantime, the Respondent filed a motion in the circuit court to dismiss the case as a result of the Petitioner's failure to comply with the court's order directing him to execute the release, which had now been affirmed (more than once). On April 16, 2008, the circuit court held a hearing on the motion to dismiss. After the hearing, on May 5, 2008, the circuit court granted respondent's motion and entered an order dismissing the case.

On May 29, 2008, the petitioner filed an appeal of the dismissal of the case with the court of appeal in *Dumorange v. City of Miami*, Case No. 3D08-1375. On June 3, 2008, the court of appeal entered an order requiring the petitioner to pay the required filing fee by June 23, 2008. As of July 21, 2008, the petitioner had not paid the required filing fee. Therefore, on July 21, 2008, the court of appeal dismissed the appeal. *Dumorange v. City of Miami,* 986 So.2d 612, 2008 WL 3561902 (Fla. Ct. App. 2008).

Subsequently, Dumorange filed the instant Petition.

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE STATE COURT ENFORCING THE PARTIES' SETTLEMENT AGREEMENT IS LEGALLY SOUND AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION FOR REVIEW BY THE UNITED STATES SUPREME COURT PURSUANT TO 28 U.S.C. § 1257.

The Petitioner seeks a Writ of Certiorari to an Order of the Florida Supreme Court dated June 20, 2008, declining to accept jurisdiction over an order of the court of appeal. However, Petitioner did not timely seek review in this Court over the earlier appellate decisions upholding the order of the circuit court enforcing the parties' settlement agreement. Thus, the Petition should be denied as untimely.

On its merits, however, the Petition should also be denied as the decision of the Florida courts enforcing the settlement is legally sound and does not implicate a federal question for review by this Court under 28 U.S.C. § 1257.

The issue asserted by Petitioner arises out of a garden variety dispute between the Petitioner and the Respondent over the enforcement of a contract. The dispute was decided against the Petitioner by a state court trial judge. The Petitioner was afforded an

evidentiary hearing which took place over two dates. At the conclusion, the trial judge, taking into consideration the weight of the testimony and the credibility of the witnesses, resolved the dispute in favor of the Respondent and entered an order accordingly. After numerous appeals through the Florida appellate courts, the relief sought in this Court is essentially another cumulative re-evaluation of the evidence in an attempt to resurrect a properly resolved state law claim.

The trial court's decision rejecting the Petitioner's claim of duress and enforcing the settlement agreement was supported by the evidence at the hearings on December 13, 2006 and January 8, 2007.

At the hearings, Petitioner testified that he was under duress stating *inter alia* that he was threatened by a commander at the police department. The commander of the police department testified at the hearing unequivocally stating that he did not threaten the Petitioner. The attorney who represented the Petitioner at the mediation testified. She stated that the Petitioner read the agreement before signing it at the mediation. She did not advise the Petitioner that he was required to sign the agreement. At the mediation, the parties engaged in substantial negotiation with regard to issues that were important to the Petitioner. The mediation lasted more than four hours. She believed the Petitioner's mental state at the mediation was such that he could reach a rational decision. She stated her belief that his impetus for settling the case was that he was

advised by a prospective employer that he needed to resolve the lawsuit in order to be hired, and that he was generally anxious to resolve the case. The Petitioner's spouse testified at the hearing. She stated that the Petitioner wanted his name cleared so that he could obtain another job.

Based on the evidence presented at the hearing, the order of the circuit court is legally sound and should not be disturbed. As a fact-finder, the trial judge is accorded deference on the resolution of disputed factual issues by judging the credibility of witnesses. *Cf. Hernandez v. New York,* 500 U.S. 352, 365 (1991) (deference to trial court findings makes particular sense where findings turn on credibility). The outcome in this case that the settlement was legally binding is amply supported by the evidence; there is no compelling reason to override the determination of the trial judge under the circumstances of this case.

Moreover, this Petition does not implicate any actual "title, right, privilege, or immunity . . . under the Constitution or the treaties or the Statutes of . . . the United States." 28 U.S.C. § 1257. The reference to Constitutional issues (Fourteenth Amendment violation) in this case is a subterfuge to invalidate an otherwise enforceable settlement agreement that has already been reviewed and approved by state courts. The proceedings below, where the Petitioner was represented by counsel and was afforded notice, an evidentiary hearing, the right to present testimony and cross-examine witnesses, satisfies more than the minimum requirements of due process. *LaChance v.*

Erickson, 522 U.S. 262, 266 (1998) (core of due process is notice and opportunity to be heard). There is no violation of due process or any other federal right by enforcement of the settlement (or the denial of recusal). As a result, this petition does not present a substantial federal question for review pursuant to 28 U.S.C. § 1257. Additional review by this Court is unnecessary and would be a further waste of judicial resources. Accordingly, review by this Court is unwarranted and should be denied.

CONCLUSION

For the reasons stated herein, the respondent respectfully requests that this Court deny Dumorange's Petition for Writ of Certiorari and affirm the Florida Supreme Court in all respects.

Respectfully submitted,

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JOHN A. GRECO, Asst. City Atty.*
CITY OF MIAMI ATTORNEY'S OFFICE
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Tel.: (305) 416-1800

*Counsel of Record Counsel for Respondent

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

GERARD DUMORANGE,

Plaintiff,

CASE NO. 03-22103 CA 24

vs.

CITY OF MIAMI,

Defendant.

_____/

ORDER

THIS CAUSE having come for hearing on January 8, 2007, before this Court upon Defendant, CITY OF MIAMI's, Motion to Enforce Settlement Agreement, and the Court having heard argument and being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED

1. That the Defendant's Motion is hereby GRANTED. The Plaintiff shall execute a general release within 10 days from the date of this Order.

2. The City shall transmit payment of the settlement funds to Plaintiffs counsel within 10 days of receipt of the general release.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida this 23 day of January, 2007.

MICHAEL A. GENDEN
CIRCUIT JUDGE

HONORABLE
MICHAEL A. GENDEN
CIRCUIT COURT JUDGE

Copies furnished to:
Miguel Parlade, Esq.
Julie O. Bru, Deputy City Attorney

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(3)

No. 08-597

Supreme Court, U.S.
FILED
FEB 6 - 2009
OFFICE OF THE CLERK

In The

Supreme Court of the United States

GERARD P. DUMORANGE,

Petitioner,

v.

CITY OF MIAMI,

Respondent.

On Petition For Writ Of Certiorari To The Florida Third District Court Of Appeal

PETITION FOR REHEARING

GERARD P. DUMORANGE
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Certified Police Officer

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PETITIONER DUMORANGE'S PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

GROUND FOR GRANTING REHEARING

DURESS AND CONTRACT ARE INTERVENING CIRCUMSTANCES THAT EFFECT JUSTIFYING REHEARING

I, Gerard P. Dumorange, do swear or declare under penalty of perjury that the foregoing is true and correct. I am respectfully requesting a rehearing of the order dated January 12, 2009 denying my requested writ of certiorari based on intervening circumstances of substantial or controlling effect and other substantial grounds not previously clearly presented.

My petition presents three interrelated questions:

I. **Duress** – What was I supposed to do when a current corrupt Police Officer pointed a gun to my forehead in the presence of my two children and then threatened to kill them if I don't sign a Mediation Settlement Agreement also known as a Contract?

II. **Contract** – Whom is responsible to pay the Florida Unemployment Appeal Commission also known as Agency for Workforce Innovation Unemployment Compensation Program Benefit Payment Control Section since paragraph 2, of the Contract also known as a Mediation Settlement

Agreement stated that I am entitled to keep the money, is not enforceable?

III. **Constitutional Rights** – Am I entitled to use deadly force whenever former Police Officer now convicted felon or current corrupt Police Officer pointed a gun to my forehead in the presence of my two children and then threatened to kill them?

Honorable Justices, I, Gerard P. Dumorange, do swear or declare under penalty of perjury that a current corrupt Police Officer pointed a gun to my forehead in the presence of my two children and then threatened to kill them if I don't sign a Mediation Settlement Agreement also known as a Contract. **Honorable Justices, as a father what was I supposed to do?**

Honorable Justices, I, Gerard P. Dumorange, do swear or declare under penalty of perjury that the Florida Unemployment Appeal Commission also known as Agency for Workforce Innovation Unemployment Compensation Program Benefit Payment Control Section is requesting the money that was given to me. My money will be garnished and my income tax withheld because paragraph 2, of the Contract also known as a Mediation Settlement Agreement stated that I am entitled to keep the money that was given to me is not valid/enforceable? **Honorable Justices, because the contract is not valid/enforceable then who is responsible?**

Honorable Justices, I, Gerard P. Dumorange do swear or declare under penalty of perjury that the only reason that I signed the Mediation Settlement Agreement also known as a Contract was because I was very concerned about my childrens' safety. After I spent $160.000.00 (One Hundred Sixty Thousand) in legal fees, why would I settle the Mediation Settlement Agreement also known as a Contract for **$10,000.00** (Ten Thousand Dollars)? **Honorable Justices, I hope that no one has to endure what my family and I endured.**

Barton v. Armstrong, a decision of the Privy Council 2 AER 465. 5 December 1973 Armstrong threatened to kill Barton if he did not sign a contract, so the court set the contract aside. An innocent party wishing to set aside a contract for duress to the person need only to prove that the threat was made and that it was a reason for entry into the contract; the onus of proof then shifts to the other party to prove that the threat had no effect in causing the party to enter into the contract. Fourteenth Amendment to the United States Constitution.

CONCLUSION

Honorable Justices, my petition for rehearing should be granted, because the above facts are undisputed, the intervening circumstances of substantial or controlling effect and other substantial grounds not previously clearly presented that must be addressed.

You are the Supreme Guardian of our Constitution. It required you to make decision not just based on case **laws** but **the truth and nothing but the truth**. It is also required you to ensure the proper Administration of equal Justice under the law for all. The issues before you are blatant violations of the United States Constitution. A Judge must be honest, fair, and impartial. Judge Michael A. Genden was not.

Honorable Justices, one day **God our creator** will be judging us according to the truth and nothing but the truth. I respected my Police Officer oath and I also followed the laws.

I, Gerard P. Dumorange, do swear or declare under penalty of perjury that the foregoing statements are true and correct.

Respectfully submitted,

GERARD P. DUMORANGE
Pro Se
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(305) 336-9217
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Certified Police Officer

CERTIFICATE OF COUNSEL

Pursuant to Rule 44 of the Supreme Court, I hereby certify that my petition for rehearing is restricted to the grounds specified in Rule 44, paragraph 2, Rules of the Supreme Court, and is being presented in good faith and not for delay.

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